

Editor's note: Erratum dated Nov. 6, 1990 at 116 IBLA 107A below.

GLENN FREEMAN
JUDITH L.D. FREEMAN

IBLA 89-653

Decided September 17, 1990

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring placer mining claim A MC 297749 null and void ab initio.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers--
Federal Land Policy and Management Act of 1976: Withdrawals--
Mining Claims: Lands Subject to--Mining Claims Rights Restoration
Act--Withdrawals and Reservations: Generally--Withdrawals and
Reservations: Reclamation Withdrawals

A mining claim located on land withdrawn under a first form reclamation withdrawal pursuant to the Act of June 17, 1902, is null and void ab initio. A first-form reclamation withdrawal effective before Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding repeal of the 1902 Act. The Mining Claims Rights Restoration Act of 1955 does not confer a right to enter and locate mining claims on lands withdrawn under a first-form reclamation withdrawal.

APPEARANCES: Glenn Freeman, Payson, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Glenn Freeman and Judith L. D. Freeman have appealed from an August 3, 1989, decision of the Arizona State Office, Bureau of Land Management (BLM), finding the Medicine Wheel placer mining claim, A MC 297749, null and void ab initio. The mining claim was located on July 12, 1989, in the SE¼ sec. 3, T. 11 N., R. 6 E., Gila and Salt River Meridian, Arizona, and "extends from the east side of the Verde River to the west side * * * encompassing an alluvial deposit" (Notice of Mining Location, A MC 297749). BLM found the claim to be null and void ab initio because it was located on land "withdrawn under a First Form Reclamation Withdrawal on December 14, 1904, and cannot be entered, selected or located in any manner so long as it remains so withdrawn."

The case file shows that "a strip of land in Arizona one mile wide on each side of the Verde River extending through [T. 11 N., R. 6 E. Gila and Salt River Meridian, Arizona]" was withdrawn for reclamation purposes by Secretary Hitchcock on December 14, 1904, pursuant to section 3 of the Act of June 17, 1902, 32 Stat. 388. Section 3 of the Act provided, pertinently, that "the Secretary of the Interior shall * * * withdraw from public entry the lands required for any irrigated works contemplated under the provisions of this Act." The purpose of the Act as stated in section 2 of the 1902 Act was "to locate and construct * * * irrigation works for the storage, diversion and development of waters, including artesian wells."

Appellants contend that, notwithstanding withdrawal from mining location of the land on which they have located their claim, they are entitled to prosecute mining operations under provision of 30 U.S.C. § 621(b), because they have given BLM 60 days notice that they intend to conduct placer operations there. They claim that their presence on the claim enhances their legal position, and request that we confirm that they have a legal right to operate under the mining laws.

[1] A mining claim located on land withdrawn under a first-form withdrawal for reclamation pursuant to the Act of June 17, 1902, 32 Stat. 388, is void ab initio. J.P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976). The land on which the Medicine Wheel claim was located in 1989 had been withdrawn from such location in 1914 and remained withdrawn despite the repeal of the Act of June 17, 1902, by section 704 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792. Repeal did not affect outstanding reclamation withdrawals, which were continued, subject to review, under 43 U.S.C. § 1714(l) (1982). Duane L. & Wyoma I. Pearson, 113 IBLA 393 (1990).

The statute appellants rely on to support their location of this withdrawn land, 30 U.S.C. § 621(b) (1982), known as the Mining Claims Rights Restoration Act of 1955, provides for entry to lands reserved for power development. ^{1/} Appellants comment in their location notice that their claim is a mile north of a power plant. Nonetheless, the withdrawal of the land on which their claim was located was not made for power, but for reclamation purposes. The Mining Claims Rights Restoration Act of 1955 provides, pertinently, that it opens to mining entry and location only those "public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites." 30 U.S.C. § 621(a) (1982). Reliance on this Act for authority to enter land withdrawn for reclamation purposes is therefore misplaced. There being no record that action has been taken to cancel the 1914 withdrawal of these lands for reclamation purposes, BLM properly found the Medicine Wheel claim to be null and void ab initio.

^{1/} For a discussion of the operation of the Mining Claims Rights Restoration Act of 1955 on locations in power-site withdrawals, see U.S Forest Service v. Milender, 104 IBLA 207, 95 I.D. 155 (1988).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

Nov. 6, 1990

116 IBLA 105	:	A MC 297749
IBLA 89-653	:	
	:	
GLENN FREEMAN	:	Mining Claim
JUDITH L. D. FREEMAN	:	

ERRATUM

An error appeared in our opinion in Glenn Freeman, 116 IBLA 105 (1990), at 116 IBLA 105 where we failed to limit a statement concerning repeal of the Act of June 17, 1902. Our observation that the 1902 Act was repealed by the Federal Land Policy and Management Act of 1976, appearing in the third paragraph on page 116 is corrected to read " * * * despite the repeal of that part of section 3 of the Act of June 17, 1902, preceding the first proviso, by the Federal Land Policy and Management Act * * *." The correction consists of the emphasized words added to the text of our opinion to show only that part of section 3 of the 1902 Act preceding the first proviso was repealed by the 1976 Act.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

APPEARANCE:

Glenn Freeman
Payson, AZ 85541

116 IBLA 107A

